

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JULIA K. DIAZ)	
Claimant)	
VS.)	
)	Docket No. 198,638
GENERAL ELECTRIC COMPANY)	
Respondent)	
AND)	
)	
ELECTRIC MUTUAL LIABILITY)	
INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appealed the Order entered by Administrative Law Judge John D. Clark on November 25, 1996, that appointed two physicians to conduct an independent medical examination of the claimant.

ISSUES

Respondent's application for review stated the issues on appeal as follows:

"(1) Whether the Court, pursuant to K.S.A. 44-516, should order a physician for an independent medical examination for rating purposes only rather than for an assessment of medical condition or need for additional medical treatment.

"(2) Whether the Court, pursuant to K.S.A. 44-516, properly appointed two independent medical examiners at the same time, to evaluate the same condition.

"(3) Whether the Court has the authority pursuant to K.S.A. 44-510e(a) to appoint more than one neutral physician.

“(4) Whether the Court has the authority pursuant to K.S.A. 44-510e(a) to appoint a neutral physician for a scheduled injury.

“(5) Whether Administrative Law Judge abused his discretion by virtue of his appointments of two neutral physicians at the time of Regular Hearing.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the Division of Workers Compensation file, the Appeals Board finds as follows:

The regular hearing was held in this matter before Administrative Law Judge John D. Clark on November 25, 1996. After completion of that hearing, the Administrative Law Judge appointed Pedro Murati, M.D., and Robert W. Rawcliffe, M.D., to conduct an independent medical examination of claimant. The Division of Workers Compensation file includes the transcript of a preliminary hearing held on April 11, 1995, and the transcript of the regular hearing held on November 25, 1996. The Appeals Board during its review of the record has failed to find a discussion or any correspondence between the parties or the Administrative Law Judge that would inform the Appeals Board the reason Administrative Law Judge ordered the independent medical examination. However, since the respondent denied accidental injury and the parties had not agreed to a functional impairment rating, the Appeals Board assumes the Administrative Law Judge is seeking medical evidence on the issues of causation and/or functional impairment.

The Appeals Board concludes that when the issues raised by the respondent are analyzed, the central question is whether the Administrative Law Judge had the authority to appoint two independent medical examiners pursuant to K.S.A. 1996 Supp. 44-510e(a) or K.S.A. 44-516 at this juncture of the proceedings. K.S.A. 1996 Supp. 44-510e(a) states in pertinent part as follows:

“If the employer and the employee are unable to agree upon the employee’s functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee’s functional impairment which shall be considered by the administrative law judge in making the final determination.”

Whereas, K.S.A. 44-516 provides as follows:

“In case of a dispute as to the injury, the director, in the director’s discretion, or upon request of either party, may employ one or more neutral health care

providers, not exceeding three in number, who shall be of good standing and ability. The health care provider shall make such examinations of the injured employee as the director may direct.”

The Appeals Board finds that both of the foregoing statutes grant the Administrative Law Judge authority to appoint one or more physicians to conduct an independent medical examination of the claimant at any point of the proceedings. Such examination may address, but is not limited to, the issues of permanent functional impairment, need for medical treatment, and whether there exists a causal relationship between claimant's injury and the employment. Furthermore, the Appeals Board finds the record in this case does not contain any evidence that it was inappropriate at this juncture of the proceedings for the Administrative Law Judge to order an independent medical examination of the claimant pursuant to either K.S.A. 1996 Supp. 44-510e(a) or K.S.A. 44-516.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated November 25, 1996, should be and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
John David Jurcyk, Lenexa, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director